

# **Exhibit 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - - x

CHASOM BROWN; MARIA NGUYEN; WILLIAM  
BYATT; JEREMY DAVIS; and CHRISTOPHER  
CASTILLO, individually and on behalf  
of all other similarly situated,

Plaintiffs,

No. 5:20-cv-03664-LHK

-against-

GOOGLE LLC,

Defendant.

- - - - - x

Zoom video conference deposition of  
RORY McCLELLAND, taken pursuant to  
notice, was held remotely, commencing  
February 18, 2022, 5:30 a.m. Eastern  
Standard Time, before Leslie Fagin, a  
Stenographic Court Reporter and Notary  
Public in the State of New York.

- - -

MAGNA LEGAL SERVICES  
320 West 37th Street, 12th Floor  
New York, New York 10018  
(866) 624-6221

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1 APPEARANCES:  
2 (All Parties Present Via Zoom.)

3  
4 BOIES SCHILLER & FLEXNER LLP  
5 Attorneys for Plaintiffs  
6 44 Montgomery Street, 41st Floor  
7 San Francisco, California 94104  
8 BY: MARK MAO, ESQUIRE  
9 ROSANNA BAEZA, ESQUIRE

10 QUINN EMANUEL URQUHART & SULLIVAN  
11 Attorneys for Defendant  
12 51 Madison Avenue, 22nd Floor  
13 New York, New York 10010  
14 BY: JOMAIRE A. CRAWFORD, ESQUIRE  
15 CARL SPILLY, ESQUIRE

16 BAILEY GLASSER  
17 Attorneys for Witness  
18 209 Capitol Street  
19 Charleston, West Virginia 25301  
20 BY: BENJAMIN L. BAILEY, ESQUIRE  
21 ELLIOTT MCGRAW, ESQUIRE

22 ALSO PRESENT:

23 LESLEY WEAVER, ESQUIRE  
24 BLEICHMAR FONTI  
25 For the Calhoun Plaintiffs

VANESSA WHEELER, Exhibit Tech  
Magna Legal Services

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1 R. McClelland  
2 RORY MCCLELLAND, called as a  
3 witness, having been duly sworn by a  
4 Notary Public, was examined and testified  
5 as follows:

6 MS. BAEZA: Good morning this is  
7 Rosanna Baeza on behalf of plaintiffs  
8 and with me is Mark Mao, also from Boies  
9 Schiller Flexner.

10 MS. WEAVER: Good morning. Lesley  
11 Weaver, Bleichmar Fonti on behalf of the  
12 Calhoun plaintiffs.

13 MS. CRAWFORD: Jomaire Crawford  
14 from Quinn Emanuel Urquhart for the  
15 defendant, Google LLC. I am joined this  
16 morning by my colleague, Carl Spilly.

17 MR. BAILEY: I'm Ben Bailey with  
18 Bailey Glasser and my colleague, Elliott  
19 McGraw is on. We represent the witness.

20 Even if one steps out, there will  
21 always be one of us here.

22 EXAMINATION BY

23 MS. BAEZA:

24 Q. Good morning. My name is Rosanna  
25 Baeza and I represent the plaintiffs in this

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1 R. McClelland  
2 case.

3 Can you state your full name for  
4 the record?

5 A. My full name is Rory James  
6 McClelland.

7 Q. Before we begin, where are you  
8 located presently?

9 A. I'm in London, United Kingdom.

10 Q. Where exactly in London?

11 A. In the Boies Schiller office. The  
12 address is No. 5 New Street Square.

13 Q. Is there anybody in the room with  
14 you today?

15 A. No, there is not.

16 Q. Mr. McClelland, have you ever  
17 testified under oath before?

18 A. No, I haven't.

19 Q. Do you understand that you are  
20 under the same oath today as if you were in a  
21 courtroom?

22 A. I do.

23 Q. I'm going to assume that you  
24 understand the questions that I ask you,  
25 unless you tell me that you don't understand

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1 R. McClelland  
2 them, is that fair?

3 A. I understand, yes.

4 Q. Is there anything that would  
5 prevent you from testifying truthfully today?

6 A. No, there is nothing.

7 Q. If at any time you need to take a  
8 break during the deposition, will you let me  
9 know?

10 A. I will.

11 Q. Do you have an undergraduate  
12 degree?

13 A. I do, yes.

14 Q. What did you study?

15 A. Electronic and computer  
16 engineering.

17 Q. Where did you earn your  
18 undergraduate degree?

19 A. At the University of Birmingham.

20 Q. When did you graduate from the  
21 University of Birmingham?

22 A. September 2001.

23 Q. Do you have a graduate degree?

24 A. I do. I have a master's in  
25 computer science from the same university.

2 (Pages 2 to 5)

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1 R. McClelland  
 2 travel to another location in order to give  
 3 testimony in connection with this matter or  
 4 was it presented as something that you were  
 5 doing voluntarily or at your own election?  
 6 A. The whole thing was at my election  
 7 and voluntarily, but if I did want to do it,  
 8 the interpretation I took away was that I had  
 9 to do it outside of Germany.  
 10 Q. During the course of that  
 11 conversation, were you made aware that you,  
 12 as a German resident, were not obligated or  
 13 were not under the subpoena power of the  
 14 United States Courts, did that come up in  
 15 your conversation at all?  
 16 A. I don't believe it did.  
 17 Q. But, nonetheless, it appears that  
 18 you were asked to give testimony and you  
 19 agreed to fly to London for that?  
 20 A. That is right, yeah.  
 21 Q. Did you have any other  
 22 conversations with either plaintiffs' counsel  
 23 at Boies Schiller or any of the other  
 24 plaintiffs that are present -- did you have  
 25 any other conversations, I don't know the one

1 R. McClelland  
 2 you just mentioned, with Mr. Richardson?  
 3 MS. BAEZA: Objection, form, vague.  
 4 A. There was an email thread, if I  
 5 remember correctly, around the logistics part  
 6 of it, but, basically, the conversation moved  
 7 at that stage.  
 8 Q. Was the email conversation, the one  
 9 you just mentioned -- actually, do you recall  
 10 the timing of that email exchange and whether  
 11 it was in the latter portion of 2021 or  
 12 whether it was in early 2022?  
 13 A. May I check?  
 14 MS. BAEZA: Objection, form,  
 15 mischaracterizes testimony.  
 16 Q. Yes, please.  
 17 A. It was early 2022, if I remember  
 18 correctly.  
 19 Q. If you needed to check, obviously,  
 20 feel free to ensure the accuracy of your  
 21 testimony.  
 22 A. I'm checking now.  
 23 So I have the email deleted here.  
 24 I first reached out on the 27th of December,  
 25 the very end of the year, so, apologies, that

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1 R. McClelland  
 2 was somewhat incorrect, and the conversation  
 3 continued into early January and we moved on  
 4 to the logistics part of that around the 7th  
 5 of January.  
 6 Q. That's helpful. Thank you.  
 7 Outside of the communications or  
 8 conversations that you have told me about so  
 9 far, any other communications with  
 10 plaintiffs' counsel that come to mind?  
 11 A. No, no others.  
 12 Q. Did plaintiffs' counsel indicate  
 13 that they were going to be referring you to  
 14 an attorney who would be representing you in  
 15 connection with your deposition?  
 16 A. I'm not sure referring was the  
 17 right word. They recommended one and I was  
 18 happy to take their recommendation.  
 19 Q. Understood.  
 20 Again, not looking to delve into  
 21 privileged conversations that you might have  
 22 had with Mr. Bailey, but I'm going to ask at  
 23 a high level, do you understand Mr. Bailey to  
 24 be charging you in connection with his  
 25 representation of you at today's deposition?

1 R. McClelland  
 2 A. No, the costs are being covered by  
 3 the plaintiffs.  
 4 Q. Was that something promised to you  
 5 or suggested to you in any way in connection  
 6 with the communications that you had with  
 7 plaintiffs' counsel?  
 8 A. It was made clear from the  
 9 beginning that they would cover those costs.  
 10 Q. Any other costs that either they  
 11 offered to cover or that you understood would  
 12 be covered in connection with your testimony  
 13 today?  
 14 A. Yes, they offered to cover the  
 15 travel costs for being here in London.  
 16 Q. Is it safe to assume those costs,  
 17 since you are currently residing in Berlin,  
 18 includes a flight and perhaps overnight  
 19 accommodations?  
 20 A. That's right, flight, hotel, Covid  
 21 tests, the usual things nowadays, like a  
 22 business trip.  
 23 Q. Understood. I haven't traveled in  
 24 a bit, but that's an important context.  
 25 Any other expenses that you think

58 (Pages 226 to 229)

1 R. McClelland  
2 unreliable, would you have any basis to  
3 dispute his conclusion?

4 A. I'm not really sufficiently  
5 technical to have a strong view there,  
6 however, it was known that this was  
7 notoriously difficult to do and finicky and,  
8 suddenly took a lot of time before we got a  
9 model that we had confidence in.

10 Q. Can you explain for us why that is,  
11 why it was tricky or finicky?

12 A. Well, there are different ways of  
13 measuring Incognito usage. Simple sessions,  
14 number of pages, an understanding of what is  
15 important, different pages have different  
16 number of ad impressions on them, some pages  
17 have none at all, some have three or four ads  
18 and that's not represented in the simple page  
19 load in Incognito metric, so where you are  
20 trying to find a model that was the best  
21 proxy to revenue impact was quite hard.  
22 Beyond that, the technical reasons, too  
23 technical for me, I'm afraid.

24 Q. That's okay.

25 Now, I would like to ask a couple

1 R. McClelland  
2 of questions about joinability and the logs  
3 that you were asked about and you testified  
4 about.

5 Do you remember counsel asking you  
6 questions regarding segmentation of regular  
7 browsing mode profiles and Incognito mode  
8 profiles?

9 A. Yes, I do.

10 Q. If we can, let's introduce tab 6,  
11 which is a document that was produced by  
12 Google during discovery. It bears the Bates  
13 No. GOOG-CABR-00892455. It should be up in  
14 front of you as T-06.

15 A. I'm looking at it now.

16 Q. Appreciate that if you could take a  
17 look at it and just let me know whenever you  
18 are done?

19 (Exhibit 23, documents beginning  
20 with Bates stamp No. GOOG-CABR-00892455,  
21 marked for identification.)

22 THE EXHIBIT TECH: Just let me know  
23 when you need me to turn the page.

24 THE WITNESS: I'm looking at the  
25 actual document, so I'm fine.

1 R. McClelland  
2 A. I have read the document. Thank  
3 you.

4 Q. Are you familiar with this document  
5 or the general policy that this document  
6 describes?

7 A. Yes, I am.

8 Q. Can you tell us what this is?

9 A. It defines how data should be  
10 treated by Google employees, and particularly  
11 how certain types of data should be handled  
12 with more care and certain things that must  
13 never happen. It's a data usage policy  
14 document.

15 Q. Did you consult this policy in  
16 connection with your work for Google?

17 A. Certainly. This document was used  
18 regularly.

19 Q. How did you -- how was this  
20 document used regularly?

21 A. Both in terms of how we would use  
22 data in our own features, but would also be  
23 referenced when we were quality auditing  
24 other feature teams features, perhaps  
25 pointing to something in this just to draw

1 R. McClelland  
2 their attention to it.

3 Q. If you could please scroll to the  
4 page that ends in 455 and I'm looking  
5 specifically at the Go/Loss-Usage header.

6 Do you see where that appears?

7 A. Page 455?

8 Q. That's right. First page -- it's  
9 at the very top of the page.

10 A. I see. Yes, I skipped over it.

11 Q. If we could call that up on the  
12 screen.

13 Do you mind rereading this sentence  
14 and letting me know when you are done?

15 A. I have read it.

16 Q. Based on your understanding of this  
17 portion of the document, do you understand  
18 that Google prohibits reidentifying any  
19 individuals using anonymous or synonymous  
20 data?

21 A. I do, but that doesn't seem to  
22 apply to the particular bit of tech shown,  
23 but, yes, I do.

24 Q. If we get to a portion of the  
25 document where there is support for that

1 R. McClelland  
2 understanding, can you just call it out and  
3 let me know?

4 A. Sure.

5 Q. Google prohibits, based on your  
6 understanding of this policy, correlating  
7 authenticated and non-authenticated  
8 information, is that right?

9 A. That is right, yes.

10 Q. Can you explain why that is?

11 A. An example would be in Incognito  
12 mode, again, a user who signed in in regular  
13 mode, one use of Incognito may be to  
14 temporarily present as a non-signed-in user  
15 and, therefore, it's important, from the  
16 user's point of view, they have chosen to do  
17 that to segment their browsing activity and,  
18 therefore, it is important that Google does  
19 not attempt to rejoin that data.

20 Q. Are you aware of Google rejoining  
21 that data?

22 A. No, as far as I am aware, Google  
23 never did that.

24 Q. Why is that?

25 A. Because it would be a breach of

1 R. McClelland  
2 user trust, potential PR incident.

3 Q. Google also prohibits  
4 fingerprinting users for the purpose of  
5 associating their activity over time or  
6 across contexts, is that right?

7 MS. BAEZA: Objection to form, lack  
8 of foundation, compound.

9 A. Yes, that is my understanding, that  
10 fingerprinting was also not allowed to be  
11 used.

12 Q. Is your understanding of why it was  
13 not allowed to be used any different than the  
14 explanation you just provided for why Google  
15 doesn't correlate authenticated and  
16 non-authenticated data?

17 A. Exactly, same reasons, user trust  
18 perception, PR.

19 Q. In the context of Incognito mode  
20 for Chrome specifically, is it also true that  
21 Google prohibits joining authenticated  
22 information with non-authenticated data?

23 A. Exactly, the policy still applies  
24 for Incognito mode.

25 Q. If a user opens an Incognito window

1 R. McClelland  
2 and does not log into a Google account, the  
3 information from their Incognito browsing  
4 session would be considered unauthenticated,  
5 is that right?

6 A. Not necessarily a user. There is  
7 nothing to prevent a user from signing into  
8 to a regular account within Incognito mode,  
9 upon which they would then be authenticated,  
10 but, by default, when you first launch an  
11 Incognito window, you would be signed out of  
12 all Google services and, therefore,  
13 unauthenticated.

14 Q. If the user in that Incognito  
15 session does not log in at all to any Google  
16 account, is the information from that  
17 browsing session unauthenticated?

18 A. That is right, it's  
19 unauthenticated.

20 Q. And Google team members, would you  
21 agree, are tasked with preventing the joining  
22 of data from non-Incognito browsing instances  
23 with Incognito browsing instances?

24 A. Tasked with preventing, my  
25 understanding more that it was prohibited, it

1 R. McClelland  
2 wasn't allowed. Whether there were efforts  
3 to actually make that harder, I don't know or  
4 not, but my understanding of the policy was  
5 that as employees, we must never do that,  
6 must never endeavor to do that.

7 Q. Are you aware of any instance where  
8 you endeavored to do that or anyone who  
9 reported to you?

10 A. No.

11 MS. BAEZA: Objection to form,  
12 compound, asked and answered.

13 A. No, I am not aware of any incident  
14 where that was tried.

15 Q. Were you, in connection with your  
16 work as Chrome browser privacy manager,  
17 responsible for enforcing this policy?

18 A. No, that was outside of my  
19 responsibilities. There were teams who were  
20 more responsible for it, but everyone had a  
21 responsibility to adhere to the policy.

22 Q. Would you say you did that in  
23 connection with your employment at Google?

24 A. Yes, that's right.

25 Q. I would now like to introduce tab

1  
2 ---  
3 EXHIBIT  
4 ---

EXHIBIT	PAGE
Exhibit 13 Documents bearing Bates Stamp No. GOOG-CABR-00173728 through GOOG-CABR-00173735	189
Exhibit 14 Documents bearing Bates Stamp No. GOOG-CABR-01561563 through GOOG-CABR-01561579	192
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1  
2 ---  
3 EXHIBIT  
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Exhibit 22 Documents beginning with Bates stamp No. GOOG-CABR-00483672	268
Exhibit 23 Documents beginning with Bates stamp No. GOOG-CABR-00892455	275
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1  
2 ---  
3 DEPOSITION SUPPORT INDEX  
4 ---

5 Direction to Witness Not to Answer  
6 Page Line Page Line Page Line  
None

7  
8 Request for Production of Documents  
9 Page Line Page Line Page Line  
None

10  
11 Stipulations  
12 Page Line Page Line Page Line  
None

13  
14 Questions Marked  
15 Page Line Page Line Page Line  
None

16  
17 To Be Filled In  
18 Page Line Page Line Page Line  
None

1  
2  
3 CERTIFICATE

4 I HEREBY CERTIFY that the witness,  
5 RORY McCLELLAND, was duly sworn by me and  
6 that the deposition is a true record of the  
testimony given by the witness.

\_\_\_\_\_  
7 Leslie Fagin,  
8 Registered Professional Reporter  
9 Dated: February 18, 2022

10  
11 (The foregoing certification of  
12 this transcript does not apply to any  
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